

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 08 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DANIEL DEAN SHEETS,

Plaintiff - Appellant,

v.

CAL A. TERHUNE; et al.,

Defendants - Appellees.

No. 06-16755

D.C. No. CV-98-06506-AWI/SMS

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, District Judge, Presiding

Submitted June 18, 2008^{**}

Before: REINHARDT, LEAVY, and CLIFTON, Circuit Judges.

California state prisoner Daniel Dean Sheets appeals pro se from the district court's judgment dismissing, without prejudice, his 42 U.S.C. § 1983 civil rights

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

action for failure to exhaust administrative remedies. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Vaden v. Summerhill*, 449 F.3d 1047, 1049 (9th Cir. 2006), and we affirm.

The district court did not err when it dismissed the action because Sheets did not avail himself of the administrative appeal process prior to filing his complaint. *See McKinney v. Carey*, 311 F.3d 1198, 1199-1200 (9th Cir. 2002) (holding that exhaustion under 42 U.S.C. § 1997e(a) must occur prior to the commencement of the action).

AFFIRMED.

Judge Reinhardt dissents.